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LEGAL WING
MAHARASHTRA POLLUTION CONTROL BOARD

C.F.C. Bldg., 2nd Floor,
Above Post Office,
Wagle Indl. Estate,
Thane-400 604.

No.WP/LW/370

Date : 16/11/1990

C I R C U L A R

Regional Officer – Bombay-HQ/Bombay/Thane/Pune/Aurangabad/Nashik/Nagpur.

Sub-Regional Officer- Bombay-I/II/III/Thane/Kalyan/Tarapur/Roha/Pune/Sangli
Nashik/Aurangabad/Nagpur/Jalgaon/Akola/Nanded.

Field Officer – Ahmednagar.

Sub : Preparation for documentary evidence.

It has been observed in almost all the cases filed by and on behalf of the M.P.C. Board that documentation of various offices is very poor and it becomes very difficult to prove the documents at the time of recording evidence and final hearing because of poor documentation.

If the documentation is not properly done, the Board is unable to prove the documents before the Court and such documents cannot be exhibited i.e. cannot be read into the evidence on behalf of the Board.

It is felt that, lack of knowledge on the part of various officers regarding documentation has created above circumstances. The Board generally rely upon the following documents at the time of preparation of compliant.

- 1) Application for consent.
- 2) Consent letter in original issued by the Board alongwith subsequent amendments.
- 3) Visit reports of the various officers of the Board, to the defaulting industries.
- 4) Vigilance sample report and communication thereof to the defaulting industries.
- 5) Warning letters issued by the Board from time to time to the defaulting industries pointing out breach of conditions on the part of defaulting industry.
- 6) Reply to the said warning letters by and on behalf of the industries.

- 7) Show Cause/ Warning Notices issued giving ultimate warning and reply to the same received by the Board.
- 8) Notice of collecting sample under Section 21 of the Water Act, 1974.
- 9) Details of sampling alongwith sealed documents.
- 10) Forwarding letter to the Govt. Analyst and acknowledgment by the Govt. Analyst regarding receipt of sample.
- 11) Receipt of analysis report from Govt. Analyst and Board Laboratory and communication thereof to the industry under sub-section 2 of section 21 of the Water Act, 1974 by RPAD alongwith acknowledgment thereof.

It has been observed that in most of cases, the letters are issued in a stenciled format without giving actual position of the particular industry. Even such letters issued by the ordinary post without keeping any acknowledgement of defaulting industry. It is suggested that further letters addressed to the industry should be acknowledged by the officer of the industry. It is also observed that even show cause notices and warning notices are not issued by RPAD or only typed on stencil as "BY RPAD" appears on the office copy but no acknowledgment of RPAD is enclosed to the office copy of the notices. Even replies received to the various letters and notices are also not properly filed. It is suggested that every show cause/warning notices should sent by RPAD only. This should be addressed to the person incharge of and responsible for the conduct of defaulting industries by name. Any reply received to such notices should be properly filed and follow up action on the said reply should be taken up immediately.

Every vigilance sample report as far as practicable served upon the industry by hand by respective officer and acknowledgment of the same should be taken on the office copy of such report. It is further pointed out that visit report should be prepared on the spot and signature of the officer-incharge or the occupier of the factory should be taken on the office copy of the visit report. The visit report should specify the names of persons in-charge of and responsible for the conduct of business of factory.

It has been observed that persons collecting sample u/s 21 of the Water Act, 1974 are not following procedure laid down u/s 21 of the Act scrupulously. Section 21 has laid down 3 situations in which samples are to be collected.

1. On request of occupier or his agent, sample is to be divided into two parts. One part is to be sent to the Public Health Laboratory, on behalf of the Board and second part to the laboratory of the Board. In most of cases, it has been noticed that analysis report of Board Laboratory is never communicated to the factory and has not brought on the record of the case. Because non-availability of record, it creates difficulty at the time of preparation of complaint. In most of cases, results of both Board Laboratory and Public Health Laboratory are communicated to the defaulting industry by R.P.A.D. or alongwith acknowledgment. Because of this, number of cases filed before the court are likely to be affected because it is mandatory on the part of the officer of the Board to send copies of report of analysis of the Board Laboratory and Public Health Laboratory to the defaulting industry under Sub-Section 2 of Section 53 of the Water Act, 1974.
2. Second situation is where occupier or his agent willfully absents himself, when the sample of sewage or trade effluent is taken, in that case, the sample should be sent to the Govt. Analyst appointed under sub-section 1 or sub-section 2 of Section 53 with the information that occupier or his agent willfully absent at the time of collection of sample. It has been observed that such cases are not reported to the Govt. Analyst and in no case cost incurred in getting such sample analysed was recovered from the defaulting industry.
3. Third situation is when the occupier or his agent does not make a request for dividing the sample into two parts, in that case, only one set of sample is to be send to the Laboratory established or recognized by the said Board under Section 17.

The above procedure are not carefully followed by the officers of the Board and therefore, number of cases are likely to be affected.

This office therefore, called upon all the officers of the Board to carefully consider the documentation part on behalf of the Board. First of all, it is necessary that every document duly signed by the officer of the Board under his own hand should be preserved properly.

Secondly, correspondence should be seen that it is served upon the persons incharge of the factory either by post or in person. In case, it is served by post, postal acknowledgment should be preserved by affixing it with the office copy or with letter. If it is served in person, then acknowledgement by the person incharge of the factory alongwith his name and designation should be taken on office copy or on that particular letter.

Thirdly, every show cause notice / warning notice should be issued by RPAD only and acknowledgment thereof should be affixed or stapled to the office copy of that notice. Further reply to the same notice or warning letter should be properly filed and follow up action regarding non-compliance should be taken.

Fourthly, every visit report should be prepared as far as practicable on the spot giving specific observations about non-compliance and the same should be communicated then and there alongwith adverse remarks by taking appropriate acknowledgement on the office copy with the name and designation of officer upon whom the same is served.

Fifthly, every vigilance sample report should be collected duly certified from the laboratory established by the Board and should be communicated adverse remarks with the copy of the same by taking appropriate acknowledgment on the office copy alongwith name & designation of officer to whom the results are communicated.

Sixthly, every report of analysis received under Section 22 should be communicated to the defaulting industry by making specific comments about adverse results, which should be sent by RPAD only and acknowledgment thereof should be stapled with office copy of forwarding letter.

The above instructions are issued on the basis of experience gained by this office in conducting number of cases after going through the files of the various offices only. These instructions should be followed scrupulously in order to make our cases successful.

Sd/-
(D. T. Devale)
Sr. Law Officer

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Copy submitted to-
Hon'ble Chairman, MPC Board, Bombay-1, for favour of information.

Copy submitted to-
Member Secretary, MPC Board, Bombay-1, for information and necessary orders.

He is requested to kindly keep office copies of consents & renewal letters issued from the Board office under the original signature of the Member Secretary, instead of stenciled signature to be produced before the Court of Law because the Courts have refused to exhibit stenciled copies of the consent in number of cases and also expressed their concerned as to how such type of important documents in original are not preserved by the Board in form of office copy. Regional Officers issuing consents to industries having 10 M3 effluents may also be instructed suitably to preserve office copies of consents duly signed by them.

Copy submitted to:
A.P.A.E., MPC Board, Bombay-1, for information and similar line of action.

Section 19 of the Water (Prevention & Control of Pollution) Act, 1974 :

19. Power of State Government to restrict the application of the Act to certain areas ;

Sub Sections :

- 1) empowers the State Government, after consultation with or on the recommendation of, the State Board, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act will apply only to such area or areas ;
- 2) states that each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundry of any district or partly by one method and partly by another.
- 3) Empowers the State Government to, by Notification in the Official Gazette :-
 - (a) alter any water pollution prevention and control area whether by way of extension or reduction; or
 - (b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas or any part or parts thereof (S.19)

Section 19 of the Air (Prevention & Control of Pollution) Act, 1981 :

Section 19 : Power to declare air pollution control areas : Section 19 of the Air (Prevention & Control of Pollution) Act, 1981 provides for the applicability of the Act to certain areas.

- (1) The State Government may, after consultation with the State Board, by notification in the official gazette, may declare any area or areas within the State as air pollution control area.
- (2) The State Government may, after consultation with the State Board, by notification in the official gazette,
 - (a) alter any air pollution control areas whether by way of extension nor reduction.
 - (b) Declare a new air pollution control area in which may be merged one or more existing air pollution control areas of any part.
- (3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area may cause or is likely to cause air pollution, it may, by notification in the official gazette, prohibit the use of such fuel in such area with effect from such date as may be specified in the Notification.
- (4) The State Government may, after consultation with the State Board, by notification in the official gazette, direct that with effect from such date as may be specified therein, no appliance, other than approved appliance, should be used in the premises situated in an air pollution control areas. However, different dates may be specified for different parts of an air pollution control area or for the use of different appliances.

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- (5) If the State Government, after consultation with the State Board is of the opinion that burning any material in air pollution control area may cause or likely to cause air pollution, it may, by notification in the official gazette, prohibit the burning of such material in such area.